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## CLARK et al. v. LANG.

March 13, 1919.

[98 S. E. 673.]

**1. Negligence (§ 121 (1)\*)—Presumption—Proof.**—Negligence will not be presumed, but must, like any other fact, be established by evidence direct or circumstantial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 402.]

**2. Negligence (§ 111 (1)\*)—Pleading—Facts and Circumstances.**—In action against owner of mill for damages caused by fire originating in mill, plaintiff cannot recover on mere allegations that defendants were negligent and allowed fire to escape from their premises; it being necessary to state facts and circumstances showing in what respect defendants were negligent.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 131-2.]

**3. Negligence (§ 139 (8)\*)—Instructions—Persons Liable.**—In action for damages caused by fire escaping from a mill, court erred in adding words "or were interested in the proceeds of the business" to a requested instruction that jury could not find against defendants unless they had some control over the engine alleged to have caused the fire; evidence being very meager as to interest of one of defendants, and there being no evidence that the other had any control or was interested in proceeds.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 138-9; 10 Va.-W. Va. Enc. Dig. 412.]

Error to Circuit Court, Buckingham County.

Action by one Lang against C. H. Clark and another. Judgment for plaintiff, and defendants bring error. Reversed.

*F. C. Moon* and *A. L. Pitts, Jr.*, both of Buckingham, for plaintiffs in error.

*Hubard, Gayle & Boatright*, of Buckingham, for defendant in error.

## KEISTER'S EX'RS v. PHILIPS' EX'X.

March 13, 1919.

[98 S. E. 674.]

**1. Appeal and Error (§ 1039 (10)\*)—Harmless Error—Bill of Particulars.**—In a suit on a note, error, if any, in denying defendant's

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.